IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 297 of 1986
With
CRIMINAL APPEAL No. 501 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BAVCHAND VALJI & 4 - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
Criminal Appeal No. 297 of 1986.

MR HN JOSHI Advocate for MR PM THAKKAR ADVOCATE for Appellant(s) : 1 – 5.

MR KP RAVAL APP for Respondent : 1.

Criminal Appeal No. 501 of 1986.

MR KP RAVAL APP for appellant – State of Gujarat,

MR HN JOSHI Advocate for MR PM THAKKAR ADVOCATE for respondents.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 08/12/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. These two appeals arise out of a judgment and order dated 7.2.1986 in Sessions Case No.57 of 1985 by the learned Sessions Judge, Bhavnagar. Appellants of Criminal Appeal No.297 of 1986, who are the original accused ('the accused' for short) were charged and tried by the learned Sessions Judge, Bhavnagar for commission of offence under Sections 302, 147, 148, 149, 326 and 324 of the Indian Penal Code ('IPC' for short) and under Section 135 of the Bombay Police Act.

At the end of the trial, A-1 and A-3 were convicted for the offence under Sections 326 and 325 of the IPC and both of them were sentenced to under-go R.I. for three years and to pay fine of Rs.500 i.d., R.I. for further period of one month for the offence under Section 326 of the

IPC and further sentenced to under-go R.I. for one year and to pay fine of Rs.500/- i.d., to under go R.I. for further period of one month for the offence under Section 325 of the IPC. It was also ordered that both the substantive sentences shall run concurrently.

A-3 was convicted for the offence under Section 323 of the IPC and sentenced to under-go S.I. for two months and to pay fine of Rs.250/- i.d. S.I. for further period of 15 days.

A-4 and A-5 were convicted for the offence under section 325 of IPC and both of them were sentenced to under-go R.I. for a period of one year and to pay fine of Rs.500/- i.d., R.I. for a further period of one month.

2. Criminal Appeal No.297 of 1986 is filed by the accused under Section 374 of the Code of Criminal Procedure ('the Code' for short)

challenging the impugned order of conviction and sentence whereas Criminal Appeal No.501 of 1986 is filed by the State of Gujarat under Section 378 of the Code challenging acquittal of the accused of the offence under Section 302 of the IPC as according to State of Gujarat, offence under Section 302 of the IPC against the accused has been duly proved.

3. The basic facts of the case have been detailed in the judgment and order of the learned Sessions Judge, therefore, it is not expedient for us to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in these appeals are that:

3.1. At the outset it is required to be mentioned that two complaints were filed at Paliad Police Station. FIR being CR.No.I-1 of 1985 was filed by A-2 whereas FIR being CR No.I-2 of 1985 was filed

by Bachubhai Rajebhai ('complainant' for short), against the accused persons. This clarification at the inception is required as there are cross-complaints filed against each other by the accused against the complainant's side and the complainant against the accused. It may also be made clear that mainly in this judgment we are concerned with the complaint filed by the complainant against the accused being CR No.I-2 of 1985 with Paliad Police station.

3.2. The complainant and the accused are owning land situated at village Dhakania of Botad Taluka. There is a common well and the residents of the village used to draw water from the said well. The water course was demarcated. There was some dispute with regard to drawing of water from the well. As per further case of prosecution, on 1.1.1985 at about 10.30. A.M. Rashida went to the house of the complainant, who is her father-in-law and informed him that Bhupat had given her a

blow with stick and there was a quarrel between the accused side on one hand and Abdul and Rashida on the other. She also informed the complainant that her husband and she were beaten with sticks.

3.3. On hearing this, the complainant, with a view to rebuke the accused party, went to the field of the accused. On the way, he was accompanied by Dadu Rahim, Haku Rahim and deceased Babu Bachu. On reaching the field, the complainant tried to rebuke the accused. As per the prosecution case, at this time the accused started the attack on the complainant's party. It was further prosecution case that A-1 was armed with Kodali, A-2 was armed with iron pipe, A-3 was armed with stick, A-4 was armed with Kharapia and A-5 was armed with stick. They caused injuries to the complainant – Bachubhai Rajebhai, Abdul Bachubhai, Dadu Rahimbhai, Haku Rahimbhai and deceased Babu Bachubhai.

3.4. The injured were thereafter removed to hospital for treatment where, during the course of treatment, Babu Bachubhai, succumbed to the injuries.

3.5. In respect of the aforesaid incident, as mentioned above, Bachu Rajebhai filed a complaint being CR No.I-2 of 1985 with Paliad Police station against the accused for commission of the offence punishable under sections 302, 147, 148, 149, 326, 324 and 323 of the IPC and Section 135 of the Bombay Police Act.

3.6. After registering the complaint, investigation was carried out by the police. During the course of investigation, statements of witnesses were recorded, panchnama of the scene of offence was prepared, as A-4 and A-5 had shown their willingness to show the weapons used for committing the crime, panchnama under Section 27

of the Evidence Act was drawn and at their instance muddamal weapons used by them were recovered, dead body of Babu Bachubhai was sent for autopsy to Civil Hospital, Bhavnagar. On receipt of the autopsy report as well as the certificates with regard to the injuries sustained by the witnesses and as evidence was divulged against the accused, they were charge-sheeted for commission of the offence under Sections 302, 147, 148, 149, 326, 324 and 323 of the IPC and Section 135 of the Bombay Police Act in the Court of learned Judicial Magistrate, First Class, Botad, who committed the case to the Court of Sessions of Bhavnagar District as the offences alleged against them were exclusively triable by the Court of Sessions.

3.7. On committal, the learned Sessions Judge, Bhavnagar framed charge against the accused for commission of the offence under sections 302, 147, 148, 149, 326, 324 and 323 of the IPC and

under Section 135 of the Bombay Police Act, at Ex.4. The charge was read over and explained to the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore they were put on trial and tried by the learned Sessions Judge, Bhavnagar in Sessions Case No.57 of 1985.

3.8 To prove the culpability of the accused, the prosecution has examined in all 13 witnesses and relied upon their oral testimony. To prove the charge levelled against the accused, the prosecution has also produced a number of documents and relied upon the contents of the same.

3.9. After recording of the evidence of the prosecution witnesses was over, the learned Sessions Judge explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and

recorded their further statement under Section 313 of the Code of Criminal Procedure ('the Code' for short). In their further statement they denied the case of the prosecution in toto. They neither led any evidence nor examined any witness to support their defence.

3.10. On appreciation, evaluation and analysis of the evidence led by the prosecution, the learned Sessions Judge came to the conclusion that the prosecution has failed to prove the charge of formation of unlawful assembly by the accused. It was also held that A-2 was not having an iron pipe in his hand but he was having stick as per statement of the deceased himself and as a result of the stick blow he had received injuries and succumbed to the same. The learned trial Judge has also given separate account as to which accused inflicted which injury to which witness. Therefore, accused were individually guilty of having caused injuries to the

complainant, witnesses and the deceased. On the basis of the aforesaid finding, the learned trial Judge came to the conclusion that offence under Section 302 of IPC has not been proved by the prosecution. However, prosecution has established the case against the accused for commission of the offence under sections 326, 325 and 323 of the IPC and has recorded separate finding qua each of the accused and accordingly he convicted the accused of the offence either punishable under Sections 326 and 325 or under section 323 of the IPC and accordingly sentence was imposed on each accused to which reference is made in earlier paragraph of this judgment. It is this finding, ultimate conclusion and resultant order of conviction and sentence recorded by the learned Sessions Judge, Bhavnagar in Sessions case No.57 of 1985 which has given rise to the present two appeals i.e., Criminal Appeal No.297 of 1986 and Criminal Appeal No.501 of 1986 preferred by the accused side and the State of

Gujarat respectively.

4. Mr. HN Joshi, learned advocate of the accused made following submissions:

4.(1). At the outset, it is submitted that A-2 and A-5 have expired after filing of the Criminal Appeal No.297 of 1986 and, therefore, the appeal qua them is required to be abated. Similarly, Criminal Appeal No.501 of 1986 filed by the State of Gujarat against A-2 and A-5 is also required to be abated.

4.(2). So far as the remaining surviving accused i.e., A-1, A-3 and A-4 are concerned, according to him, the learned trial Judge has committed an error of law in not believing the defence of the accused which is duly established by the presence of the injuries on the persons of the accused. It is also emphasised by him that prosecution has totally failed to explain the injuries sustained

by the accused. According to him, independent eye witness – Valu Vira had supported the defence theory and the prosecution had to declare him hostile. This independent witness had categorically stated that the complainant party was aggressor and the accused were exercising the right of private defence. It is emphatically submitted by him that first in point of time, A-2 had registered FIR being Cr.No.I-1/85 with Paliad Police Station against the complainant's side. He has also invited the attention of this Court to the Panchnama of the scene of offence where it is mentioned that the alleged incident had taken place in the field of the accused persons and therefore there is a reason to believe that the complainant's side were the aggressor who had come to beat the accused persons. According to him, prosecution witnesses have tried to improve their version by stating that A-1 had assaulted with the reverse side of Kodali. This improvement is made with deliberate

intention so as to suit their version with medical evidence. It is also emphasised by him that all witnesses were examined after evidence of the doctor was recorded. He further submitted hat the prospection has examined interested and inimical witnesses. Number of eye-witnesses were available, whose statements were also recorded but for the reason best known to the prosecution, those witnesses have been deliberately not examined. No reason is assigned for dropping those witnesses. There is no evidence to the effect that the complainant's side formed an unlawful assembly and came to the field of the accused with deadly weapons in their hands like axe, iron pipe, stick, etc., and assaulted the accused.

4.(3). On the aforesaid premises, it is submitted by him that the impugned judgment and order of conviction recorded by the learned Sessions Judge convicting the accused for

commission of offence under Sections 326, 325 or 323 of IPC, as the case may be, in respect of each accused, is against the evidence on record, therefore, the impugned judgment and order deserves to be quashed and set aside by allowing the appeal filed by the accused by holding that the accused are not guilty to the charge levelled against them and as a consequence thereof the appeal filed by the State of Gujarat deserves to be dismissed. He, therefore, urged to alow Criminal Appeal No.297 of 1986 and dismiss Criminal Appeal No.501 of 1986.

4.(4). Alternatively he has also submitted that the incident in question had taken place in the year 1985 and almost 20 years have passed and no untoward incident has happened thereafter despite the fact that the complainant's side and the accused persons are staying in the same village. A-1 has remained in jail for almost 15 months, A-3 has remained in jail for one month and A.4

has remained in jail for two months as against the respective order of sentence passed against them and, therefore, if this Honourable Court comes to the conclusion that there is no substance in the appeal filed by the accused, in that case, the appeal may be allowed qua the quantum of sentence only by saying that the period of imprisonment undergone by the accused be treated as substantive sentence awarded to them. He therefore urged to pass appropriate order.

5. In reply to this submission, Mr. KP Raval, learned APP for the appellant – State of Gujarat which has filed Criminal Appeal No.501 of 1986, has submitted that there is ample evidence on record to come to the conclusion that the accused had formed an unlawful assembly with the common object to assault the complainant's side and in furtherance of their common object they armed with deadly weapons and assaulted the complainant

and others and inflicted injuries to them and they were severally beaten as a result of which some of them have received grievous injuries, some of them have received simple injuries and in the said incident Babu Bachubhai who received fatal blow with iron pipe from A-2 has succumbed to the same during the course of treatment. Therefore, all the accused are equally responsible for causing death of Babu Bachu as they formed unlawful assembly. Therefore, according to him, the order of acquittal of the accused of the offence under section 302 of IPC is illegal and improper and requires to be quashed and set aside by allowing the appeal filed by the appellant – State of Gujarat and thereby holding the accused guilty of the offence under section 302 of the IPC and accordingly they may be punished. He therefore urged to allow the appeal filed by the appellant – State of Gujarat.

6. We have considered the submissions advanced

by the learned advocates of the parties. We have also perused the impugned judgment and order, testimonial collections and record and proceedings which were called for by this Court while admitting both these appeals.

7. At the outset, it is required to be noted that A-2 and A-5 has expired after filing of the appeal. In this connection, death certificate of A-2 issued by Talati cum Mantri of Dhakania Gram Panchayat has been produced. A perusal of the same shows that A-2 has died on 28.9.1995. So far as death of A-5 is concerned, certificate dated 4.12.2005 has been issued by Sarpanch of Dhakania Gram Panchayat. On perusal of the same, it is seen that A-5 has died natural death. Since A-2 and A-5 have died after filing of the appeals, the appeal filed by them and the appeal filed against them by the State of Gujarat deserve to be abated.

8. There is no dispute that the root cause of the alleged incident was drawing of water from the common well. As per the prosecution case, on 1.1.1985 at about 10.30 A.M. Bai Rashida went to the house of the complainant and informed him that Bhupat had given her a blow with stick and there was quarrel between accused on one side and Abdul and Rashida on the other side. The complainant, therefore, with a view to rebuke the accused, went to the field of the accused and on the way he was accompanied by Dadu Rahimbhai, Haku Rahimbhai and deceased Babu Bachubhai. On reaching the field, he tried to rebuke the accused. Thereafter the alleged incident occurred. A-2 has lodged complaint being CR No.I-1/1985 with Paliad Police Station against the complainant's side whereas Bachubhai Rajebhai has lodged complaint being CR No.I-2/1985 with Paliad Police Station against the accused.

9. In view of the aforesaid admitted position, the first question that arises for the

consideration of this Court is as to whether the accused formed an unlawful assembly in furtherance of their common object to assault the complainant's side and to injure the witnesses and to kill Babu Bachubhai.

10. A perusal of the impugned judgment and order and the evidence of the witness and more particularly FIR filed by A-2 clearly reveals that on 1.1.1985 at about 10.30 A.M. Bai Rashida went to the house of the complainant and informed him that A-3 had given her a blow with stick and therefore the complainant in company of Dadu Rahimbhai, Haku Rahimbhai and deceased Babu Bachu went to the field of the accused and rebuked the accused. Thereafter the accused called A-2 from the adjoining field who inflicted a blow with an iron pipe to Babu Bachubhai. The complainant, therefore, intervened. On intervention of the complainant and Abdul, A-2 has inflicted a blow with iron pipe to Abdul also whereas A-1 has

inflicted axe blow to Abdul.

11. There is no dispute that blood stain of the deceased was found in the field of the accused (See Panchnama of the scene of offence). Therefore, there is a reason to believe that the alleged incident had taken place in the field of the accused. From the evidence on record, according to this court, all the accused except A-2 were already on their field and A-2 came there subsequently and therefore it cannot be said that accused had formed an unlawful assembly in furtherance of their common object to cause injuries to the witnesses and to murder Babu Bachubhai. The incident had taken place since the complainant's side went to the field of the accused. Therefore, it is held that the prosecution has failed to prove the charge of forming an unlawful assembly by the accused.

12. After having held that the accused have not formed unlawful assembly in furtherance of their

common object to cause injuries to the witnesses and to kill Babu Bachubhai, the next question which comes for consideration of this Court is as to which accused caused which injury to which of the witnesses and to deceased Babu Bachubhai.

13. According to P.W.5, Bachu Rajebhai, the complainant, whose evidence was recorded at Ex.39, A-1 had inflicted a blow with Kodali to Abdul Bachu. He had also inflicted a blow with the reverse side of Kodali to Dadu Rahimbhai on his leg. He had also inflicted a Kodali blow to Haku Rahim on his head. He has also deposed that A-1 had also given a kodali blow to him on his left hand. Same is the evidence of P.W.6, Abdulbhai Bachubhai who was examined at Ex.41, P.W.8, Dadubhai Rahim, who was examined t Ex.44, P.W.10, Hakubhai Rahimbhai who was examined at Ex.46. All the above witnesses have been cross-examined at length by the accused side. However, they stuck to their version which they have

narrated in the examination in chief.

14. In this connection, it would be relevant to refer to the oral evidence of P.W.1, Dr. Kantilal B. Rabari, Medical Officer, who was examined at Ex.21. He has inter alia testified that he has examined all the injured persons as well as the victims and he found injuries upon them. In this connection, he has also issued certificates at Exs.22, 23, 24, 25, 26 and 27. Therefore, it is duly proved that the deceased as well as the witnesses have received fatal, grievous and simple injuries respectively.

15. In view of the aforesaid evidence, according to us, so far as the A-1 is concerned, it is proved that he has caused grievous hurt to Abdul Bachu, Dadu Rahim, the complainant Bachu Rajebhai and therefore according to us he has been rightly convicted by the learned trial Judge for commission of the offences under sections 326

and 325 of the IPC.

16. So far as A-2 is concerned, as per evidence of P.W.5, Bachu Rajebhai, the complainant whose evidence was recorded at Ex.39, he had inflicted pipe blow to Babu Bachubhai on his head and also inflicted pipe blow to Abdul Bachubhai on ribs. Same is the evidence of P.W.6, Abdulbhai Bachubhai, whose evidence was recorded at Ex.41, P.W.8, Dadubhai Rahimbhai whose evidence was recorded at Ex.44, P.W.10, Hakubhai Rahimbhai, whose evidence was recorded at Ex.46. The evidence of the above mentioned witnesses is consistent with the regard to the fatal blow given by A-2 to deceased Babu Bachubhai and since A-2 has died it is not necessary for us to decide what offence he has committed.

17. So far as A-3 is concerned, as per P.W.6, Abdul Bachubhai, who was examined at Ex.41, and P.W.9, Rashida Rahimbhai who was examination

Ex.45, he gave stick blow to Bai Rashida Abdul in the incident which has taken place first in point of time which has resulted in the quarrel between the accused side on one side and the complainant's side on the other and therefore according to us, the learned trial Judge has very rightly convicted him for the offence punishable under section 323 of the IPC.

18. So far as A-4 is concerned, as per the evidence of P.W.5, Bachu Rajebhai, the complainant, who was examined at Ex.39 and P.W.6, Abdul Bachubhai, who was examined at Ex.41, he inflicted a kharapio blow on the back side of the hand of the complainant and also inflicted a blow with kharapio on the back side of left shoulder of Abdul Bachubhai. Therefore, according to us, the learned trial Judge has very rightly convicted him under section 325 of IPC.

19. So far as A-5 is concerned, against him

offence is that he has inflicted kodali blow on the back of P.W.5, Bachu Rajebhai, the complainant who was examined at Ex.39, kodali blow on the right leg of P.W.6, Abdul Bachubhai, who was examined at Ex.41. Since he has died after filing of the appeal, it is not necessary for us to decide what offence he has committed.

20. Mr. HN Joshi, learned advocate for the accused, has contended that prosecution has suppressed the genesis of the crime by not explaining the serious and visible injuries sustained by the accused in the same incident. According to him, there is an evidence to the effect that A-1, A-2 and A-3 were also seriously beaten by pipe by the complainant's side and therefore they were admitted in the hospital and they were treated by the same doctor who has treated the complainant and deceased Babu Bachubhai. According to him, as per oral evidence of P.W.1, Dr. Kantilal Rabari, A-1 to A-3 had

also received serious injuries and he has testified before the Court to this effect and since the prosecution has failed to explain the genesis of the crime and injuries sustained by the accused, the accused may be acquitted of the offences with which they were charged.

21. To buttress the aforesaid submission, he has relied upon the following decisions of the Apex Court:

(i) Lakshami Singh and others v. State of Bihar, AIR 1976 SC 2263,

(ii) Chandu v. State of Maharashtra, (2002) 9 SCC 408;

(iii) Rajender Singh and others v. State of Bihar, (2000) 4 SCC 298.

22. We are not at all impressed with the aforesaid submission advanced by Mr. Joshi, learned advocate of the accused. It is true that

in Lakshmi Singh's case (supra) and in Chandu's case (supra) the Supreme Court has laid down the proposition that if the prosecution conceals the origin and genesis of the crime by suppressing material facts and the injuries sustained by the accused has not been explained, it has to be held that the prosecution has not come with clean hands and evidence of the witnesses produced by it does not inspire confidence and accused are entitled to the benefit of doubt and acquittal. However, in Rajender Singh's case the Supreme Court has held that the prosecution's failure to explain injuries on the accused ipso facto cannot be held to be fatal to the prosecution if evidence led by the prosecution is otherwise clear, cogent and trustworthy.

23. Applying the principles laid down by the Supreme Court in the case of Rajender Singh's case (supra) to the facts of the present case, on perusal of the evidence of P.W.1, Dr. Kantilal

Rabari at Ex.21, he has admitted in his cross-examination that he has examined A-1, A-2 and A-3 with regard to the injuries sustained by them. He has also issued certificates which are on record at Ex. 28, 29 and 30 wherein the injuries sustained by them have been narrated by him. On perusal of the said certificates and his oral evidence it is seen that the injuries sustained by A-1 to A-3 were simple in nature and possible by hard and blunt substance.

24. The accused have also lodged FIR which is on record at Ex.58. From the contents of the said FIR it is seen that there was a fight between two groups and in the said fight A-1 to A-3 have also received simple injuries which were possible by hard and blunt substance.

25. P.W.10, Haku Rahim who was examined at Ex.46 has in his oral testimony stated about the injuries sustained by A-1 to A-3 in the said

incident. Therefore also prosecution has not suppressed the genesis of the crime and the free fight between two groups. The learned trial Judge has also discussed in his judgment about the free fight between the two groups.

26. The prosecution has explained the injuries sustained by the accused and, therefore, according to us the prosecution has not suppressed the genesis of the crime.

27. In this view of the matter, the contention that the prosecution has suppressed the genesis of the crime by not disclosing the material fact and more particularly by not explaining the injuries sustained by the accused, and, therefore, they are entitled to the benefit of it and to get acquittal has no substance.

28. At the risk of repetition, it be stated that the complainant party came to the field of the

accused party where there were only four persons and thereafter A-2 came and therefore also there was no unlawful assembly constituted by the accused. This fact is also discussed by this Court in earlier paragraphs of this judgment.

29. In earlier paragraph of this judgment, we have discussed the injuries caused by the surviving accused i.e., A-1, A-3 and A-4 to the complainant and to the witnesses. Therefore, according to us, surviving accused i.e., A-1, A-3 and A-4 have been rightly convicted by the learned trial Judge for the respective injuries caused by them to the victims/witnesses.

30. Mr. HN Joshi, learned advocate for the accused and Mr. KP Raval, learned APP are unable to dislodge the said finding. We find ourselves in compete agreement with the said finding and resultant order of conviction recorded by the learned trial Judge against the surviving accused

i.e., A-1, A-3 and A-4 and according to us no other conclusion is possible except the conclusion reached by the reached trial Judge. Had A-2 been survived, the matter would have been considered differently.

31. In aforesaid view of the matter, we confirm the impugned judgment and order convicting the accused for the respective offences committed by them as held by the learned trial Judge.

32. Now this takes us to examine the order of sentence imposed upon them.

33. So far as A-1 is concerned, he has been convicted for commission of the offence under sections 326 and 325 of the IPC and sentenced to undergo R.I. for three years and to pay fine of Rs.500/- i.e., R.I. for further one month for the offence under Section 326 of IPC and sentenced to undergo R.I. for one year and to pay fine of

Rs.500/- i.d. R.I. for further one month for the offence under section 325 of IPC. It is also ordered that both the sentences should run concurrently. It appears from the record that he has remained in jail or a period of 15 months.

34. So far as A-3 is concerned, he has been convicted for commission of offence under section 323 of the IPC and sentenced to undergo S.I. for two months and to pay fine of Rs.250/- i.d. S.I. for further period of 15 days. He has remained in jail for about one month.

35. Similarly, A-4 has been convicted for commission of offence under section 325 of IPC and sentenced to undergo R.I. for one year and to pay fine of Rs.500/- i.d. R.I. for further period of one month. He has remained in jail for about two months.

36. This court has held that A-2 has

inflicted pipe blow on the head of deceased Babu Bachubhai who has died. Since A-2 has died the appeal filed by him and the appeal filed against him deserve to be abated. Similarly, A-5 had inflicted kodali blow to the complainant Bachu Rajebhai and P.W.6, Abdul Bachubhai, P.W.8, Dadubhai Rahim, P.W.10, Hakubhai Rahimbhai. Since he has also died, the appeal filed by him and the appeal field against him deserve to be abated.

37. It is required to be noted that the incident in question took place in the year 1985 and almost 20 years have elapsed and no untoward incident has happened thereafter despite the fact that both the parties i.e., complainant's side and accused are staying in the same village. Therefore, according to us, no useful purpose would be served by ordering them to serve out the remaining part of the sentence after a period of 20 years. According to us, the period of sentence undergone by each accused is required to be

treated as substantive sentence imposed upon them and to that extend i.e., qua sentence only, the appeal filed by the accused i.e., Criminal Appeal No.297 of 1986 is required to be allowed.

38. The appeal filed by the State of Gujarat being Criminal Appeal No. 501 of 1986 against the accused deserves to be dismissed.

39. For the foregoing reasons, Criminal Appeal No. 501 of 1986 field by the State of Gujarat against the surviving accused shall stand dismissed whereas Criminal Appeal No.297 of 1986 filed by the accused is allowed in part and accordingly it is partly allowed qua sentence only and it is held that the conviction recorded against them for the respective offences is hereby confirmed. However, the order of sentence imposed upon them is modified by saying that the period of sentence undergone by them is treated as substantive sentence imposed upon them.

40. Criminal Appeal Nos.501 of 1986 filed by the State of Gujarat against A-2 and A-5 and the Criminal Appeal No.297 of 1986 filed by A-2 and A-5 against the State of Gujarat challenging their conviction and sentence stand abated as they have expired.

Since the accused are on bail, their bail bonds shall stand cancelled and sureties are discharged.

(A.M. Kapadia, J.)

(S.R. Brahmbhatt, J.)

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